STATE OF MICHIGAN

COURT OF APPEALS

NORMAN ALBERT MARKEL, Plaintiff-Appellee,	UNPUBLISHED May 12, 2005
v	No. 252054 Macomb Circuit Court
DAN DEGRAW and COUNTY OF MACOMB, Defendants-Appellants.	LC No. 2002-002176-NI

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendants appeal as of right the order denying their motion for summary disposition based on governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant DeGraw, a deputy sheriff, stopped plaintiff's truck for a traffic violation. DeGraw stopped his police vehicle behind plaintiff's truck, on the shoulder of the road, and turned the vehicle's steering wheel so that the front tires were pointed toward the road. He did not turn off the vehicle's ignition. DeGraw leaned into his vehicle to retrieve some papers, and as he was walking to another police vehicle, his vehicle began rolling towards the road. Plaintiff was injured when he attempted to stop the vehicle by placing his hands on the front bumper. DeGraw eventually stopped the vehicle.

Plaintiff filed suit alleging that DeGraw negligently failed to park the police vehicle in a manner that would prevent it from rolling, and that his injuries were directly and proximately caused by DeGraw's negligence. Plaintiff alleged that Macomb County was vicariously liable for DeGraw's negligence. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), alleging that plaintiff's claims were barred by governmental immunity because DeGraw was not operating the motor vehicle at the time of the incident, and that no evidence showed that any action taken by DeGraw proximately caused plaintiff's injuries. The trial court denied the motion pursuant to MCR 2.116(C)(7).

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A governmental agency is immune from tort liability when it is "engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). There are several narrowly drawn

exceptions to governmental immunity, including the motor vehicle exception. This exception provides that a governmental agency "shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner." MCL 691.1405. The negligent operation of a vehicle requires that the motor vehicle was being operated as a motor vehicle. The exception encompasses only activities that are directly associated with the driving of a motor vehicle. *Chandler v Muskegon Co*, 467 Mich 315, 320-321; 652 NW2d 224 (2002).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c). To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

The applicability of governmental immunity is a question of law that we review de novo on appeal. *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

We reverse the trial court's order denying defendants' motion for summary disposition. How DeGraw's vehicle was put into motion is unclear; however, it is undisputed that at the time the accident occurred, the vehicle had been stopped for approximately ten minutes. After DeGraw stopped his vehicle to speak with plaintiff, its presence on the road was no longer directly associated with driving. *Poppen v Tovey*, 256 Mich App 351, 355-356; 664 NW2d 269 (2003). Although DeGraw may have inadvertently put the vehicle into motion when he leaned inside to get some papers, he did not do this for the purpose of driving the vehicle; therefore, the vehicle was not being operated as a motor vehicle at the time of the accident. *Id*. at 356. The trial court erred in concluding that the motor vehicle exception applied in this case. *Chandler, supra*.

Furthermore, the trial court erred in finding that an issue of fact existed as to the proximate cause of plaintiff's injuries. Regardless whether plaintiff deliberately placed himself in front of DeGraw's vehicle, as defendants contend, or whether the vehicle rolled toward plaintiff, as he contends, the "most immediate, efficient, and direct cause" of plaintiff's injury was plaintiff's act of placing his hands on the vehicle in an attempt to stop it, and not any action undertaken by DeGraw. *Robinson, supra*. Defendants were entitled to summary disposition.

Reversed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter